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7 UNITED STATES DISTRICT COURT

8 NORTHERN DISTRICT OF CALIFORNIA

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10 HENRY L. HARRIS, )  
11 Plaintiff(s), ) No. C 05-1286 BZ  
12 v. ) **FINDINGS OF FACT**  
13 JOHN E. POTTER, U.S. )  
Postmaster General, )  
14 Defendant(s). )  
15 \_\_\_\_\_ )  
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17 By Order dated May 11, 2006, I scheduled an evidentiary  
18 hearing be held in order to clarify whether a) Henry Harris in  
19 2003 experienced an adverse employment action, and b)  
20 defendant had legitimate non-retaliatory reasons for denying  
21 Mr. Harris overtime work in 2003. See Harris v. Potter, 2006  
22 WL 1305222 (N.D. Cal.). Due to the untimely death of Mr.  
23 Harris, the evidentiary hearing did not occur until March 26,  
24 2007. At the hearing, defendant was present and represented  
25 by counsel. Victoria Monroe, having been substituted as  
26 plaintiff as successor in interest to Mr. Harris, was present  
27 and acting *pro se*.

28 Having considered all testimony and pertinent evidence

1 entered into the record, I make the following **FINDINGS OF**  
2 **FACT:**

3 1. In 2003 and 2004, at the time he complained that he  
4 was subject to retaliation, Mr. Harris was employed by  
5 defendant at his Bay Valley District as a Driver Instructor  
6 Examiner (DIE), assigned to the Training and Development Unit  
7 (Training) of the Human Resources Department. One of his  
8 principal duties was to train people who had been hired to  
9 drive postal service vehicles.

10 2. In 2003 and 2004, Virginia Glover was the manager of  
11 the Human Resources Department of the Bay Valley District.  
12 Her department had approximately 65 employees. During this  
13 period, none of the employees in her department received  
14 overtime inasmuch as she believed that, as a support unit,  
15 there was no overtime budget for her department.

16 3. In 2003 and 2004, Janice Newsome was the manager of  
17 the Training Unit at the Bay Valley District and Mr. Harris  
18 worked in her unit. During that period, she did not approve  
19 any overtime for any employee in her unit because she believed  
20 that there was no budget for overtime.

21 4. Although Budget and Finance Department records  
22 indicate that approximately 101 overtime hours were allotted  
23 to the Human Resources Department for fiscal year 2003, and  
24 272 hours for 2004, Ms. Glover was not aware of these  
25 allocations.

26 5. During 2003 and 2004 no employee in the Training Unit  
27 was paid overtime.

28 6. Another part of the Bay Valley District is the

1 Transportation and Networks Division. One of the principal  
2 duties of its employees is to drive the trucks that carry mail  
3 between postal service facilities. Some of these drivers are  
4 called Tractor Trailer Operators (TTOs). Some TTOs, such as  
5 Dennis Ward, have as one of their duties training or re-  
6 training other TTOs.

7 7. Those hired to drive postal service vehicles must  
8 complete a multi-step training program requiring classroom and  
9 hands-on vehicle instruction, and culminating in three days of  
10 "carrier academy."

11 8. The training must be coordinated so that the  
12 prerequisite steps are completed prior to the three day  
13 academy.

14 9. In 2003 and 2004, when one or more full-time DIE's  
15 were absent from work, or when additional trainers were needed  
16 to meet the training demands, TTOs were assigned to handle DIE  
17 duties (on an ad hoc basis).

18 10. When ad hoc DIE's were utilized, they were paid  
19 straight time out of the Transportation budget. They were not  
20 paid overtime.

21 11. When on February 21, 2003, Mr. Ward was utilized as  
22 an ad hoc DIE, he was not paid any overtime.

23 12. Use of ad hoc DIE's was more efficient than assigning  
24 overtime to Mr. Harris. Since Mr. Harris was working a full  
25 day, and since the driver training required two to three hours  
26 per person, he could not train as many people working overtime  
27 as could an ad hoc DIE working a full day. It was also more  
28 economical for defendant since it provided additional trainers

1 to the Training Unit at no additional cost to defendant, since  
2 the ad hoc DIEs were paid straight time from the  
3 transportation budget and because more employees could be  
4 trained per day.

5 13. The Training Unit kept no overtime desired list.

6 14. The Transportation Department kept overtime desired  
7 lists for each of the various craft sections, including TTOs,  
8 by tour or shifts.

9 15. Historically, employees such as Mr. Harris who worked  
10 as DIE's in the Training Unit were not allowed to sign onto  
11 the overtime desired lists for the TTO Section.

12 16. As a DIE, Mr. Harris would have been eligible for  
13 overtime hours in the various craft Sections only after the  
14 Sections' overtime desired lists were exhausted and only after  
15 the employees working in other tours within the same Section  
16 declined the assignment.

17 17. The evidence presented at the hearing was that in  
18 2003 and 2004, the TTO overtime desired list was never  
19 exhausted. No evidence was presented to the contrary. I  
20 therefore find that during 2003 and 2004, Mr. Harris was never  
21 denied an opportunity for overtime work in the Transportation  
22 Department for which he was eligible.

23 Dated: March 28, 2007

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25 Bernard Zimmerman  
26 United States Magistrate Judge

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